

ESTTA Tracking number: **ESTTA670906**

Filing date: **05/06/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Kind LLC
Granted to Date of previous extension	05/06/2015
Address	1372 Broadway New York, NY 10018 UNITED STATES
Attorney information	Margarita Wallach McCarter & English, LLP 245 Park Avenue, 27th Floor New York, NY 10167 UNITED STATES mwallach@mccarter.com, apang@mccarter.com, dlynch@mccarter.com Phone:(212) 609-6800

Applicant Information

Application No	86300597	Publication date	01/06/2015
Opposition Filing Date	05/06/2015	Opposition Period Ends	05/06/2015
Applicant	Kindhub, LLC 2136 Ford Parkway, #133 St. Paul, MN 55116 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Dietary supplement drinks, namely, protein drinks
Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: A mobile software application providing a marketplace for sellers and buyers of goods and services and providing information in the field of health, wellness, fitness, and nutrition, reducing human impact on the environment, using and developing sustainable products, services, and sustainable business solutions, conserving plants, animals, water, and energy
Class 016. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Cook books
Class 018. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Imitation leather bags and wallets
Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Shirts, pants, headwear, footwear, and imitation leather gloves

Class 029. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Milk; meat
Class 032. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Fruit and vegetable juices containing nutritional supplements
Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Online retail and wholesale store services featuring environmentally responsible and sustainable products and food products; operating an on-line marketplace for sellers and buyers of goods and services; promoting public awareness of nutrition and healthy food options, reducing human impact on the environment, using sustainable products and sustainable business solutions, and conserving plants, animals, water, and energy; business consulting in the field of environmental management, namely, advising businesses and individuals on issues of environmental impact, conservation, preservation, and protection, and economic analysis for business purposes in the nature of assisting companies to reduce impact on the environment and develop sustainable products, services, and business solutions
Class 041. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Online journals, namely, blogs in the field of health, wellness, fitness, and nutrition, reducing human impact on the environment, using and developing sustainable products, services, and sustainable business solutions, conserving plants, animals, water, and energy; arranging and conducting seminars in the field health, wellness, fitness, and nutrition, reducing human impact on the environment, using and developing sustainable products, services, and sustainable business solutions, and conserving plants, animals, water, and energy; educational and entertainment services, namely, providing programs in the field of health, wellness, fitness and nutrition, reducing human impact on the environment, using and developing sustainable products, services, and sustainable business solutions, and conserving plants, animals, water, and energy; providing information in the field of fitness; consulting services in the field of fitness
Class 044. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Providing information in the field of health, wellness, nutrition, and identifying healthy food options; consulting services in the field of health, wellness, and nutrition

Grounds for Opposition


False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2984772	Application Date	06/14/2004
Registration Date	08/16/2005	Foreign Priority Date	NONE
Word Mark	KIND		
Design Mark			
Description of	NONE		


Mark	
Goods/Services	Class 030. First use: First Use: 2003/02/18 First Use In Commerce: 2003/02/18 Ready to eat, cereal derived food bars containing nuts

U.S. Registration No.	3971639	Application Date	11/20/2007
Registration Date	05/31/2011	Foreign Priority Date	NONE
Word Mark	KIND		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2003/02/18 First Use In Commerce: 2003/02/18 Nutrition bars, namely, processed fruit-and-nut-based food bars, nut based snack food bars		

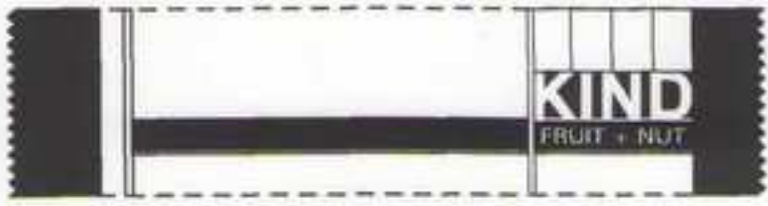
U.S. Registration No.	4161495	Application Date	11/20/2007
Registration Date	06/19/2012	Foreign Priority Date	NONE
Word Mark	KIND		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2011/05/31 First Use In Commerce: 2011/09/26 Clothing and apparel, namely, T-shirts,sweatshirts, caps, vests, jackets Class 029. First use: First Use: 2003/02/18 First Use In Commerce: 2003/02/18 Sweet snacks, namely, fruit based snackfood, dried fruit mixes; snack mixes consisting primarily of processed fruits and processed nuts; nutrition bars, namely, nut and seed based snack bars; fruit based snack food bars also containing grains, cereals, dried fruit, fruit juice;nut based snack food Class 030. First use: First Use: 2011/06/08 First Use In Commerce: 2011/06/08		


	Snacks, namely, cereal based snack food; cereal based snack food bars, granola based snack food bars, grain based snackfood; Snack foods, namely, granola based mixes, rice based snack food, whole grain based snack food
--	--

U.S. Application No.	85579711	Application Date	03/26/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	KIND		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 0 First Use In Commerce: 0 Non-alcoholic beverages, namely, fruit juices, vegetable juices, fruit and vegetable juices, flavored water, sport drinks; bottled, carbonated and non carbonated water; non-alcoholic beverage mixes, specifically, powders and drink crystalsfor making vitamin enriched beverages excluding mixes for teas and not for medicinal purposes		

U.S. Registration No.	3882221	Application Date	09/16/2009
Registration Date	11/30/2010	Foreign Priority Date	NONE
Word Mark	KIND		
Design Mark			
Description of Mark	<p>The mark consists of the word "KIND" in white on a horizontal black bar beneath a four-color panel consisting of the colors yellow, red, green and blue. Underneath the black bar are two more black bars separated by white lines. To the left of the word "KIND" and the four-color panel is a narrow vertical stripe in red. A black stripe runs horizontally across the middle of the mark and extends towards the right side to become the middle black bar beneath the word "KIND". The horizontal stripe is delineated by white lines. At the left edge of the long horizontal stripe is a narrow vertical stripe in broken lines to show placement. The large white areas above and below the long horizontal stripe represent transparent areas and are not part of the mark, and the white areas to the left of the narrow vertical stripe and to the right of the four-color panel represent transparent areas or background and are not part of the mark. The matter shown by the broken lines depicting the outside of the mark and the narrow vertical stripe is not a part of the mark and serves only to indicate the position of the mark on the goods.</p>		


Goods/Services	Class 029. First use: First Use: 2003/02/18 First Use In Commerce: 2003/02/18 Healthy snacks, namely, nut and seed based snack bars; processed fruit-and nut-based food bars, nut based snack food bars, fruit based snack food bars also containing nuts, grains, cereals and dried fruit		
----------------	---	--	--

U.S. Registration No.	4097493	Application Date	04/24/2009
Registration Date	02/14/2012	Foreign Priority Date	NONE
Word Mark	KIND FRUIT + NUT		
Design Mark			
Description of Mark	<p>The mark consists of the product packaging trade dress for the presentation of ready to eat food bars and the terms "KIND FRUIT + NUT" on the product packaging. The packaging configuration consists of two large transparent panels or windows through which the product is seen, this panel is divided by a narrow band placed in the middle of the transparent window. The terms "FRUIT + NUT" appear within the band and at the right hand side; at either end of the narrow band is a solid rectangular panel which extends from the top to the bottom of the packaging. The word "KIND" appears on the right of the packaging above the narrow band and the words "FRUIT + NUT". Four smaller vertical rectangular bars appear above the bold letters "KIND". The matter shown in broken lines is not part of the mark and serves only to show the position or placement of the mark.</p>		
Goods/Services	Class 029. First use: First Use: 2003/02/18 First Use In Commerce: 2003/02/18 Nutrition bars, namely, nut and seed based snack bars; processed fruit-and nut-based food bars, nut based snack food bars, fruit based snack food bars also containing nuts, grains, cereals and dried fruit		

U.S. Registration No.	4013148	Application Date	01/02/2010
Registration Date	08/16/2011	Foreign Priority Date	NONE
Word Mark	KINDINGS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2009/06/00 First Use In Commerce: 2011/07/05		

	Healthy snacks, namely, nut and seed based snack bars; processed fruit and nut-based food bars, nut based snack food bars, fruit based snack food bars also containing nuts, grains, cereals and dried fruit
--	--

U.S. Registration No.	4053499	Application Date	08/31/2009
Registration Date	11/08/2011	Foreign Priority Date	NONE
Word Mark	KINDTASTIC		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2010/02/01 First Use In Commerce: 2011/04/22 Healthy snacks, namely, nut and seed based snack bars; processed fruit-and nut-based food bars, nut based snack food bars, fruit based snack food bars also containing nuts, grains, cereals and dried fruit		

U.S. Registration No.	4049775	Application Date	08/31/2009
Registration Date	11/01/2011	Foreign Priority Date	NONE
Word Mark	KINDELICIOUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2010/02/01 First Use In Commerce: 2011/04/27 Healthy snacks, namely, nut and seed based snack bars; processed fruit-and nut-based food bars, nut based snack food bars, fruit based snack food bars also containing nuts, grains, cereals and dried fruit		

Attachments	76596770#TMSN.png(bytes) 77981723#TMSN.png(bytes)
-------------	--

	77333800#TMSN.png(bytes) 85579711#TMSN.png(bytes) 77827342#TMSN.png(bytes) 77721453#TMSN.png(bytes) 77903894#TMSN.png(bytes) 77816084#TMSN.png(bytes) 77816085#TMSN.png(bytes) Notice of Opposition against KINDHUB Serial No. 86300597.pdf(567826 bytes) Exhibit A to Notice of Opposition.pdf(461751 bytes)
--	---

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/mw/
Name	Margarita Wallach
Date	05/06/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application
Serial No. 86/300,597
Filed: June 4, 2014
For the mark: **KINDHUB**
Published: January 6, 2015

KIND Management Inc.,

Opposer,

v.

KINDHUB, LLC,

Applicant.

OPPOSITION NO. _____

Commissioner for Trademarks
United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

KIND Management Inc. (“Kind” or “Opposer”), a Delaware corporation having its principal place of business at 1372 Broadway, New York, New York 10018, as successor in interest to KIND Inc. and KIND LLC, will be damaged by registration of the mark KINDHUB (“Applicant’s Mark”) shown in Application Serial No. 86/300,597, filed by KINDHUB, LLC, a limited liability company organized and existing under the laws of the State of Delaware, having its principal place of business at 2136 Ford Parkway, No. 133, St. Paul, Minnesota 55116 (“Applicant”) based on an intent-to-use basis in connection with “dietary supplements drinks, namely, protein drinks” in International Class 5; “a mobile software application providing a

marketplace for sellers and buyers of goods and services and providing information in the field of health, wellness, fitness, and nutrition, reducing human impact on the environment, using and developing sustainable products, services, and sustainable business solutions, conserving plants, animals, water, and energy” in International Class 9; “cook books” in International Class 16; “imitation leather bags and wallets” in International Class 18; “shirts, pants, headwear, footwear, and imitation leather gloves” in International Class 25; “milk, meat” in International Class 29; “fruit and vegetable juices contacting nutritional supplements” in International Class 32; “online retail and wholesale store services featuring environmentally responsible and sustainable products and food products; operating an online marketplace for sellers and buyers of goods and services; promoting public awareness of nutrition and healthy food options, reducing human impact on the environment, using sustainable products and sustainable business solutions, and conserving plants, animals, water, and energy; business consulting in the field of environmental management, namely advising businesses and individuals on issues of environmental impact, conservation, preservation, and protection, and economic analysis for business purposes in the nature of assisting companies to reduce impact on the environment and develop sustainable products, services, and business solutions” in International Class 35; “online journals, namely, blogs in the field of health, wellness, fitness and nutrition, reducing human impact on the environment, using and developing sustainable products, services, and sustainable business solutions, conserving plants, animals, water, and energy; arranging and conducting seminars in the field of health, wellness, fitness and nutrition, reducing human impact on the environment, using and developing sustainable products, services, and sustainable business solutions and conserving plants, animals, water, and energy; educational and entertainment services, namely, providing programs in the field of health, wellness, fitness and nutrition, reducing human impact

on the environment, using and developing sustainable products, services, and sustainable business solutions, and conserving plants, animals, water, and energy; providing information in the field of fitness; consulting services in the field of fitness” in International Class 41 and “providing information in the field of health, wellness, nutrition, and identifying healthy food options; consulting services in the field of health, wellness, and nutrition” in International Class 44 (“Applicant’s Goods and Services”). Opposer will be damaged by the registration of Applicant’s Mark and opposes the foregoing application (the “Application”) on the following grounds:

1. On December 31, 2014, KIND LLC assigned all right, title and interest in and to those certain trademarks, trademark registrations and goodwill appurtenant thereto (“KIND Marks”) as set forth below in paragraph 6, including without limitation, the right to take proceedings against third parties to protect and/or defend the said KIND Marks, to KIND Inc.

2. On January 1, 2015, Opposer acquired by assignment from KIND Inc. all right, title and interest in and to the KIND Marks as set forth below in paragraph 6, including without limitation, the right to take proceedings against third parties to protect and/or defend the said KIND Marks.


3. Opposer, through its predecessors-in-interest, commenced use of the trademark KIND in connection with snack food bars at least as early as June 14, 2004. Since that time, Opposer, through its predecessors-in-interest, has continuously used the trademark KIND in commerce.


4. Opposer is the owner of the well-known trademark KIND as used in connection with apparel as well as the well-known mark KIND and other “KIND” formative trademarks as used in connection with snack food bars and other snack foods.

5. Opposer owns the trademark registration for KIND in association with “clothing and apparel, namely, T-shirts, sweatshirts, caps, vests, jackets” in Class 25 which was first used by Opposer on May 31, 2011 and first used in commerce on September 26, 2011.

6. Opposer owns the following trademarks (collectively the “KIND Marks”) and registrations on the Principal Register in the United States Patent and Trademark Office (“USPTO”):

Mark	Registration / Serial No.	Filing Date / Registration Date	Goods
KIND	2,984,772	June 14, 2004 / August 16, 2005	“Ready to eat, cereal derived food bars containing nuts” in Class 30
KIND	3,971,639	November 20, 2007 / May 31, 2011	“Nutrition bars, namely, processed fruit-and-nut-based food bars, nut based snack food bars” in Class 29
KIND	4,161,495	November 20, 2007 / June 19, 2012	“Clothing and apparel, namely, T-shirts, sweatshirts, caps, vests, jackets” in Class 25 “Sweet snacks, namely, fruit based snack food, dried fruit mixes; snack mixes consisting primarily of processed fruits and processed nuts; nutrition bars, namely, nut and seed based snack bars; fruit based snack food bars also

Mark	Registration / Serial No.	Filing Date / Registration Date	Goods
			<p>containing grains, cereals, dried fruit, fruit juice; nut based snack food” in Class 29</p> <p>“Snacks, namely, cereal based snack food; cereal based snack food bars, granola based snack food bars, grain based snack food; Snack foods, namely, granola based mixes, rice based snack food, whole grain based snack food” in Class 30</p>
KIND	85/579,711	March 26, 2012	<p>“Non-alcoholic beverages, namely, fruit juices, vegetable juices, fruit and vegetable juices, flavored water, sport drinks; bottled, carbonated and non carbonated water; non-alcoholic beverage mixes, specifically, powders and drink crystals for making vitamin enriched beverages excluding mixes for teas and not for medicinal purposes” in Class 32</p>
	3,882,221	September 16, 2009 November 30, 2010	“Healthy snacks, namely, nut and seed

Mark	Registration / Serial No.	Filing Date / Registration Date	Goods
			based snack bars; processed fruit-and nut-based food bars, nut based snack food bars, fruit based snack food bars also containing nuts, grains, cereals and dried fruit" in Class 29
	4,097,493	April 24, 2009 February 14, 2012	"Nutrition bars, namely, nut and seed based snack bars; processed fruit-and nut-based food bars, nut based snack food bars, fruit based snack food bars also containing nuts, grains, cereals and dried fruit" in Class 29
KINDINGS	4,013,148	January 2, 2010 August 16, 2011	"Healthy snacks, namely, nut and seed based snack bars; processed fruit and nut-based food bars, nut based snack food bars, fruit based snack food bars also containing nuts, grains, cereals and dried fruit" in Class 29
KINDTASTIC	4,053,499	August 31, 2009 November 8, 2011	"Healthy snacks, namely, nut and seed based snack bars; processed fruit-and nut-based food bars, nut based snack food bars, fruit based snack food bars also containing nuts, grains, cereals and

Mark	Registration / Serial No.	Filing Date / Registration Date	Goods
			dried fruit" in Class 29
KINDELICIOUS	4,049,775	August 31, 2009 November 1, 2011	"Healthy snacks, namely, nut and seed based snack bars; processed fruit-and nut-based food bars, nut based snack food bars, fruit based snack food bars also containing nuts, grains, cereals and dried fruit" in Class 29

Copies of the registration certificates printed from the USPTO website for the above referenced trademarks are attached as Exhibit A.

7. Opposer has never abandoned and has, through its predecessors-in-interest, continuously used the KIND Marks in connection with the foregoing goods.

8. The registrations referenced above are valid and subsisting, in full force and effect. Opposer's Registration No. 2,984,772 for the trademark KIND is incontestable pursuant to the provisions of Section 15 of the Lanham Act, 15 U.S.C. § 1065, and all of the registrations referenced above constitute conclusive evidence of Opposer's exclusive right to use the KIND Marks in commerce in connection with the goods specified in the registrations.

9. Since at least as early as March 29, 2005 Opposer has been continuously selling on-line snack bars under the trademark KIND and has continuously sold online since at least as early as 2011 apparel under the trademark KIND.

10. Opposer is the owner of the trade name KIND which it, through its predecessors-in-interest, has continuously used since a date prior to any date of priority that may be asserted by Applicant.

11. During its longstanding, widespread and continuous use of the KIND Marks and the trade name KIND, Opposer has expended considerable time, effort and financial resources in advertising and publicizing the sale of the goods bearing the KIND Marks and sold under the trade name KIND. The KIND Marks and the KIND trade name are symbolic of the extensive goodwill and consumer recognition that Opposer has established through substantial and extensive expenditures of time, effort and other resources in connection with promotion and advertising of the goods Opposer offers and sells under the KIND Marks and the KIND trade name. As a result of the foregoing and the high quality of Opposer's apparel and snack products the public and the trade have come to recognize the products offered in conjunction with the KIND Marks and the trade name KIND as signifying Opposer and its apparel and snack foods.

12. Upon information and belief, Applicant is a limited liability company organized and existing under the laws of the State of Delaware with a principal place of business located at 2136 Ford Parkway, No. 133, St. Paul, Minnesota 55116.

13. On June 4, 2014 Applicant filed the Application based on an intent-to-use for the trademark KINDHUB in commerce in connection with Applicant's Goods and Services. Accordingly, the KIND Marks cited above, and the trade name KIND, have priority of use and/or registration to Applicant's use of and application for Applicant's Mark.

14. The Application was published for opposition on January 6, 2015. An extension of the deadline for opposing the Application was timely filed. The current deadline to oppose the Application is May 6, 2015.

15. The trademark proposed for registration by the Applicant, namely, KINDHUB, is identical to and/or confusingly similar to the KIND Marks and Opposer's trade name KIND, and is applied to goods and services that are identical and/or closely related to the goods and services

offered and sold by Opposer under the KIND Marks and the KIND trade name. Applicant's Mark also deceptively points to the Opposer. Applicant's Mark so closely resembles Opposer's KIND Marks and KIND trade name as to be likely to be confused therewith and mistaken therefor. Applicant's Mark is deceptively similar to Opposer's KIND Marks and KIND trade name so as to cause confusion and lead to deception as to the origin of Applicant's Goods and Services bearing the Applicant's Mark.

16. Upon information and belief, Applicant's Goods and Services bearing Applicant's Mark will be promoted and sold or offered for sale through the same distribution channels and to the same classes of consumers as those of Opposer.

17. If Applicant is permitted to use and register its trademark KINDHUB for Applicant's Goods and Services as specified in its Application, there will be confusion in the trade. As a result, the Opposer will be injured and damaged by reason of the similarity between the Applicant's mark KINDHUB and Opposer's KIND Marks and KIND trade name. Consumers will associate Applicant's Goods and Services with those of the Opposer, and mistakenly believe that such goods and services are provided, endorsed by, or otherwise affiliated with the Opposer.

COUNT ONE

Likelihood of Confusion

18. Opposer repeats and realleges each and every allegation set forth in paragraphs 1 through 17.

19. Based on the similarities between Opposer's KIND Marks and KIND trade name and Applicant's Mark, and the similarity and related nature of the goods and services of the respective parties, Applicant's Mark so resembles Opposer's KIND Marks and KIND trade name, which were previously and continuously used in the United States and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive consumers, with consequent injury to Opposer and to the public in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

20. The public is likely to falsely associate Applicant's Goods and Services under the KINDHUB mark with Opposer or with Opposer's goods and services, falsely believe that Applicant's Goods and Services emanate from or are sponsored, endorsed or licensed by Opposer, or falsely believe that there is some relationship between Applicant and Opposer.

21. The granting of a trademark registration for the trademark KINDHUB to Applicant would be contrary to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), and would violate or diminish the prior and superior rights of Opposer in its KIND Marks and KIND trade name.

22. Applicant's Application and the presumption of exclusivity that would arise from a registration to Applicant of the trademark KINDHUB are inconsistent with Opposer's prior rights in the KIND Marks and KIND trade name and the rights flowing from Opposer's federal trademark registrations for the KIND Marks.

23. Opposer will be damaged by the registration sought by Applicant because such registration will support and assist Applicant in the confusing and misleading use of the

Applicant's Mark and will give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

COUNT TWO

Falsely Suggests a Connection with Opposer

24. Opposer repeats and realleges each and every allegation set forth in paragraphs 1 through 23.

25. Opposer will be damaged by registration of Applicant's Mark under Section 13 of the Lanham Act, 15 U.S.C. § 1063, on the ground that Applicant's use and registration of the subject mark will falsely suggest a connection between Applicant and Opposer to the damage of Opposer and injury to the public, in violation of Section 2(a) of the Lanham Act, 15 U.S.C. 1052(a).

COUNT THREE

Dilution

26. Opposer repeats and realleges each and every allegation set forth in paragraphs 1 through 25.

27. In view of the strength of Opposer's KIND Marks, the duration and extent of Opposer's use and advertising of its KIND Marks, the nationwide use of Opposer's KIND Marks, and the degree of recognition of Opposer's KIND Marks, Opposer's KIND Marks have become famous. Opposer's KIND Marks were famous prior to the filing date of the Application for Applicant's Mark.

28. Applicant's Mark is likely to cause, and will cause, dilution of the distinctive value of Opposer's KIND Marks under Section 43(c) of the Lanham Act of 1946, as amended, 15 U.S.C. § 1125(c).

29. Opposer will be damaged if Applicant's Mark is granted registration because Applicant will obtain statutory rights in the designation KINDHUB in violation and derogation of the established prior rights of Opposer.


WHEREFORE, Opposer respectfully requests that said Application Serial No. 86/300,597 be rejected, that no registration be issued thereon to Applicant, that this Opposition be sustained in favor of Opposer and that the Trademark Trial and Appeal Board grant such other and further relief as it deems just and appropriate.

Payment has been provided in the requisite amount to cover the statutory filing fee for filing a Notice of Opposition. All communications should be addressed to Opposer's counsel, McCarter & English at the address stated below.

Dated: May 6, 2015

Respectfully submitted,

McCarter & English, LLP

By: Margarita Wallach 

Margarita Wallach
Gary H. Fechter
Alice M. Pang
Attorneys for Opposer
KIND Management Inc.
245 Park Ave, 27th Floor
New York, NY 10167
Tel: (212) 609-6800
Fax: (212) 609-6921

CERTIFICATION OF SERVICE

The undersigned hereby certifies that the foregoing NOTICE OF OPPOSITION against Trademark Application Serial No. 86/300,597 for the trademark KINDHUB has been served on counsel for Applicant by First Class Mail at the following address:

Joel D. Leviton
Stinson Leonard Street LLP
150 5th Street, Ste. 2300
Minneapolis, Minnesota 55402

Dated: May 6, 2015



Danielle Lynch

EXHIBIT A

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 2,984,772

Registered Aug. 16, 2005

TRADEMARK
PRINCIPAL REGISTER

KIND

PEACEWORKS (DELAWARE CORPORATION)
444 PARK AVENUE SOUTH
NEW YORK, NY 10016

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

FOR: READY TO EAT, CEREAL DERIVED FOOD
BARS CONTAINING NUTS, IN CLASS 30 (U.S. CL.
46).

SER. NO. 76-596,770, FILED 6-14-2004.

FIRST USE 2-18-2003; IN COMMERCE 2-18-2003.

CURTIS FRENCH, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office

KIND

Reg. No. 3,971,639

Registered May 31, 2011

Int. Cl.: 29

TRADEMARK

PRINCIPAL REGISTER

KIND, LLC (DELAWARE LIMITED LIABILITY COMPANY)

P.O. BOX 1393

OLD CHELSEA STATION, NY 10113

FOR: NUTRITION BARS, NAMELY, PROCESSED FRUIT-AND-NUT-BASED FOOD BARS,
NUT BASED SNACK FOOD BARS, IN CLASS 29 (U.S. CL. 46).

FIRST USE 2-18-2003; IN COMMERCE 2-18-2003.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,984,772.

SN 77-981,723, FILED 11-20-2007.

HOWARD SMIGA, EXAMINING ATTORNEY



David J. Kyros

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

KIND

Reg. No. 4,161,495

Registered June 19, 2012

Int. Cls.: 25, 29, and 30

KIND LLC (DELAWARE LIMITED LIABILITY COMPANY)
P.O. BOX 705 MIDTOWN STATION
NEW YORK, NY 10018

FOR: CLOTHING AND APPAREL, NAMELY, T-SHIRTS, SWEATSHIRTS, CAPS, VESTS, JACKETS, IN CLASS 25 (U.S. CLS. 22 AND 39).

TRADEMARK

FIRST USE 5-31-2011; IN COMMERCE 9-26-2011.

PRINCIPAL REGISTER

FOR: SWEET SNACKS, NAMELY, FRUIT BASED SNACK FOOD, DRIED FRUIT MIXES; SNACK MIXES CONSISTING PRIMARILY OF PROCESSED FRUITS AND PROCESSED NUTS; NUTRITION BARS, NAMELY, NUT AND SEED BASED SNACK BARS; FRUIT BASED SNACK FOOD BARS ALSO CONTAINING GRAINS, CEREALS, DRIED FRUIT, FRUIT JUICE; NUT BASED SNACK FOOD, IN CLASS 29 (U.S. CL. 46).

FIRST USE 2-18-2003; IN COMMERCE 2-18-2003.

FOR: SNACKS, NAMELY, CEREAL BASED SNACK FOOD; CEREAL BASED SNACK FOOD BARS, GRANOLA BASED SNACK FOOD BARS, GRAIN BASED SNACK FOOD; SNACK FOODS, NAMELY, GRANOLA BASED MIXES, RICE BASED SNACK FOOD, WHOLE GRAIN BASED SNACK FOOD, IN CLASS 30 (U.S. CL. 46).

FIRST USE 6-8-2011; IN COMMERCE 6-8-2011.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,984,772.

SN 77-333,800, FILED 11-20-2007.

HOWARD SMIGA, EXAMINING ATTORNEY



David S. Kypas

Director of the United States Patent and Trademark Office

Generated on: This page was generated by TSDR on 2015-05-06 19:56:03 EDT

Mark: KIND

KIND

US Serial Number: 85579711

Application Filing Date: Mar. 26, 2012

Register: Principal

Mark Type: Trademark

Status: A third request for extension of time to file a Statement of Use has been granted.

Status Date: Dec. 10, 2014

Publication Date: Apr. 09, 2013

Notice of Allowance Date: Jun. 04, 2013

Mark Information

Mark Literal Elements: KIND

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *...* identify additional (new) wording in the goods/services.

For: Non-alcoholic beverages, namely, fruit juices, vegetable juices, fruit and vegetable juices, flavored water, sport drinks; bottled, carbonated and non carbonated water; non-alcoholic beverage mixes, specifically, powders and drink crystals for making vitamin enriched beverages excluding mixes for teas and not for medicinal purposes

International Class(es): 032 - Primary Class

U.S Class(es): 045, 046, 048

Class Status: ACTIVE

Basis: 1(b)

Basis Information (Case Level)

Filed Use: No	Currently Use: No	Amended Use: No
Filed ITU: Yes	Currently ITU: Yes	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Kind LLC

Owner Address: P.O. Box 705 Midtown Station
New York, NEW YORK 10018
UNITED STATES

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Margarita Wallach, Esq.

Attorney Primary Email Address: mwallach@mccarter.com

Attorney Email Yes
Authorized:

Correspondent

Correspondent Name/Address: Margarita Wallach, Esq.
McCarter & English, LLP
245 Park Avenue, 27th Floor
New York, NEW YORK 10167
UNITED STATES

Phone: (212) 609-6800

Fax: (212) 609-6921

Correspondent e-mail: mwallach@mccarter.com dlynch@mccarter.com

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Dec. 11, 2014	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Dec. 10, 2014	EXTENSION 3 GRANTED	69302
Dec. 02, 2014	EXTENSION 3 FILED	69302
Dec. 02, 2014	TEAS EXTENSION RECEIVED	
Jun. 17, 2014	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Jun. 16, 2014	EXTENSION 2 GRANTED	69302
May 29, 2014	EXTENSION 2 FILED	69302
Jun. 16, 2014	CASE ASSIGNED TO INTENT TO USE PARALEGAL	69302
May 29, 2014	TEAS EXTENSION RECEIVED	
Jan. 15, 2014	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Nov. 28, 2013	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Nov. 26, 2013	EXTENSION 1 GRANTED	98765
Nov. 26, 2013	EXTENSION 1 FILED	98765
Nov. 26, 2013	TEAS EXTENSION RECEIVED	
Oct. 25, 2013	ATTORNEY REVOKED AND/OR APPOINTED	
Oct. 25, 2013	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Jun. 04, 2013	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Apr. 09, 2013	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Apr. 09, 2013	PUBLISHED FOR OPPOSITION	
Mar. 20, 2013	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Mar. 07, 2013	LAW OFFICE PUBLICATION REVIEW COMPLETED	68171
Mar. 06, 2013	ASSIGNED TO LIE	68171
Feb. 24, 2013	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jan. 09, 2013	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Jan. 09, 2013	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Jan. 09, 2013	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Dec. 18, 2012	ATTORNEY REVOKED AND/OR APPOINTED	
Dec. 18, 2012	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Jul. 09, 2012	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jul. 09, 2012	NON-FINAL ACTION E-MAILED	6325
Jul. 09, 2012	NON-FINAL ACTION WRITTEN	69192
Jun. 30, 2012	ASSIGNED TO EXAMINER	69192
Apr. 02, 2012	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Mar. 29, 2012	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information	
TM Attorney: SANTOMARTINO, MARTHA L	Law Office Assigned: LAW OFFICE 112
File Location	
Current Location: INTENT TO USE SECTION	Date in Location: Jun. 16, 2014

Assignment Abstract Of Title Information

Summary

Total Assignments: 3

Applicant: Kind LLC

Assignment 1 of 3

Conveyance: SECURITY INTEREST

Reel/Frame: 4881/0331

Pages: 9

Date Recorded: Oct. 15, 2012

Supporting Documents: assignment-tm-4881-0331.pdf

Assignor

Name: KIND LLC

Execution Date: Oct. 15, 2012

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where
Organized: DELAWARE

Assignee

Name: BANK OF MONTREAL, AS AGENT

Legal Entity Type: CHARTERED BANK

State or Country Where
Organized: CANADA

Address: 115 SOUTH LASALLE STREET
CHICAGO, ILLINOIS 60603

Correspondent

Correspondent Name: RICHARD KALWA

Correspondent Address: 111 WEST MONROE STREET
CHAPMAN AND CUTLER LLP
CHICAGO, IL 60603

Domestic Representative - Not Found

Assignment 2 of 3

Conveyance: RELEASE BY SECURED PARTY

Reel/Frame: 5178/0309

Pages: 7

Date Recorded: Dec. 19, 2013

Supporting Documents: assignment-tm-5178-0309.pdf

Assignor

Name: BANK OF MONTREAL

Execution Date: Dec. 19, 2013

Legal Entity Type: CHARTERED BANK

State or Country Where
Organized: CANADA

Assignee

Name: KIND LLC

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where
Organized: DELAWARE

Address: 8 WEST 38TH STREET, 6TH FLOOR
NEW YORK, NEW YORK 10018

Correspondent

Correspondent Name: RICHARD KALWA

Correspondent Address: 111 WEST MONROE STREET
CHAPMAN AND CUTLER LLP
CHICAGO, IL 60603

Domestic Representative - Not Found

Assignment 3 of 3

Conveyance: TRADEMARK SECURITY AGREEMENT

Reel/Frame: 5181/0230

Pages: 8

Date Recorded: Dec. 19, 2013

Supporting Documents: assignment-tm-5181-0230.pdf

Assignor

Name: KIND LLC

Execution Date: Dec. 19, 2013

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where
Organized: DELAWARE

Assignee

Name: BANK OF AMERICA, N.A., AS ADMINISTRATIVE AGENT

Legal Entity Type: NATIONAL BANKING ASSOCIATION

State or Country Where
Organized: UNITED STATES

Address: 135 S. LASALLE STREET
IL4-135-09-61
CHICAGO, ILLINOIS 60603

Correspondent

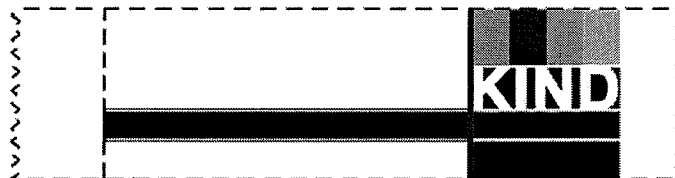
Correspondent Name: TERRY L. WITCHER, PARALEGAL

Correspondent Address: MCGUIREWOODS LLP
P.O. BOX 31247
CHARLOTTE, NC 28202

Domestic Representative - Not Found

United States of America

United States Patent and Trademark Office



Reg. No. 3,882,221

KIND, LLC (DELAWARE LIMITED LIABILITY COMPANY)
P.O. BOX 1393

Registered Nov. 30, 2010

OLD CHELSEA STATION, NY 10113

Int. Cl.: 29

FOR: HEALTHY SNACKS, NAMELY, NUT AND SEED BASED SNACK BARS; PROCESSED FRUIT-AND NUT-BASED FOOD BARS, NUT BASED SNACK FOOD BARS, FRUIT BASED SNACK FOOD BARS ALSO CONTAINING NUTS, GRAINS, CEREALS AND DRIED FRUIT, IN CLASS 29 (U.S. CL. 46).

TRADEMARK

PRINCIPAL REGISTER

FIRST USE 2-18-2003; IN COMMERCE 2-18-2003.

OWNER OF U.S. REG. NO. 2,984,772.

THE COLOR(S) YELLOW, RED, GREEN, BLUE, BLACK AND WHITE IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF THE WORD "KIND" IN WHITE ON A HORIZONTAL BLACK BAR BENEATH A FOUR-COLOR PANEL CONSISTING OF THE COLORS YELLOW, RED, GREEN AND BLUE. UNDERNEATH THE BLACK BAR ARE TWO MORE BLACK BARS SEPARATED BY WHITE LINES. TO THE LEFT OF THE WORD "KIND" AND THE FOUR-COLOR PANEL IS A NARROW VERTICAL STRIPE IN RED. A BLACK STRIPE RUNS HORIZONTALLY ACROSS THE MIDDLE OF THE MARK AND EXTENDS TOWARDS THE RIGHT SIDE TO BECOME THE MIDDLE BLACK BAR BENEATH THE WORD "KIND". THE HORIZONTAL STRIPE IS DELINEATED BY WHITE LINES. AT THE LEFT EDGE OF THE LONG HORIZONTAL STRIPE IS A NARROW VERTICAL STRIPE IN BROKEN LINES TO SHOW PLACEMENT. THE LARGE WHITE AREAS ABOVE AND BELOW THE LONG HORIZONTAL STRIPE REPRESENT TRANSPARENT AREAS AND ARE NOT PART OF THE MARK, AND THE WHITE AREAS TO THE LEFT OF THE NARROW VERTICAL STRIPE AND TO THE RIGHT OF THE FOUR-COLOR PANEL REPRESENT TRANSPARENT AREAS OR BACKGROUND AND ARE NOT PART OF THE MARK. THE MATTER SHOWN BY THE BROKEN LINES DEPICTING THE OUTSIDE OF THE MARK AND THE NARROW VERTICAL STRIPE IS NOT A PART OF THE MARK AND SERVES ONLY TO INDICATE THE POSITION OF THE MARK ON THE GOODS.



SER. NO. 77-827,342, FILED 9-16-2009.

ROBIN MITTLER, EXAMINING ATTORNEY

David J. Kypas

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office



Reg. No. 4,097,493

Registered Feb. 14, 2012

Int. Cl.: 29

TRADEMARK

PRINCIPAL REGISTER

PEACEWORKS HOLDINGS LLC (DELAWARE LIMITED LIABILITY COMPANY)
PO BOX 1393 OLD CHELSEA STATION
NEW YORK, NY 10113

FOR: NUTRITION BARS, NAMELY, NUT AND SEED BASED SNACK BARS; PROCESSED FRUIT-AND NUT-BASED FOOD BARS, NUT BASED SNACK FOOD BARS, FRUIT BASED SNACK FOOD BARS ALSO CONTAINING NUTS, GRAINS, CEREALS AND DRIED FRUIT, IN CLASS 29 (U.S. CL. 46).

FIRST USE 2-18-2003; IN COMMERCE 2-18-2003.

OWNER OF U.S. REG. NO. 2,984,772.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FRUIT + NUT" AND THE NONDISTINCTIVE PACKAGING CONFIGURATION, APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE PRODUCT PACKAGING TRADE DRESS FOR THE PRESENTATION OF READY TO EAT FOOD BARS AND THE TERMS "KIND FRUIT + NUT" ON THE PRODUCT PACKAGING. THE PACKAGING CONFIGURATION CONSISTS OF TWO LARGE TRANSPARENT PANELS OR WINDOWS THROUGH WHICH THE PRODUCT IS SEEN, THIS PANEL IS DIVIDED BY A NARROW BAND PLACED IN THE MIDDLE OF THE TRANSPARENT WINDOW. THE TERMS "FRUIT + NUT" APPEAR WITHIN THE BAND AND AT THE RIGHT HAND SIDE; AT EITHER END OF THE NARROW BAND IS A SOLID RECTANGULAR PANEL WHICH EXTENDS FROM THE TOP TO THE BOTTOM OF THE PACKAGING. THE WORD "KIND" APPEARS ON THE RIGHT OF THE PACKAGING ABOVE THE NARROW BAND AND THE WORDS "FRUIT + NUT". FOUR SMALLER VERTICAL RECTANGULAR BARS APPEAR ABOVE THE BOLD LETTERS "KIND". THE MATTER SHOWN IN BROKEN LINES IS NOT PART OF THE MARK AND SERVES ONLY TO SHOW THE POSITION OR PLACEMENT OF THE MARK.

SER. NO. 77-721,453, FILED 4-24-2009.

ELLEN PERKINS, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

United States of America
United States Patent and Trademark Office

KINDINGS

Reg. No. 4,013,148

Registered Aug. 16, 2011

Int. Cl.: 29

TRADEMARK

PRINCIPAL REGISTER

KIND, LLC (DELAWARE LIMITED LIABILITY COMPANY)
OLD CHELSEA STATION
P.O. BOX 1393
NEW YORK, NY 10113

FOR: HEALTHY SNACKS, NAMELY, NUT AND SEED BASED SNACK BARS; PROCESSED FRUIT AND NUT-BASED FOOD BARS, NUT BASED SNACK FOOD BARS, FRUIT BASED SNACK FOOD BARS ALSO CONTAINING NUTS, GRAINS, CEREALS AND DRIED FRUIT, IN CLASS 29 (U.S. CL. 46).

FIRST USE 6-0-2009; IN COMMERCE 7-5-2011.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,984,772.

SN 77-903,894, FILED 1-2-2010.

JAMES GRIFFIN, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

KINDTASTIC

Reg. No. 4,053,499

Registered Nov. 8, 2011

Int. Cl.: 29

TRADEMARK

PRINCIPAL REGISTER

KIND, LLC (DELAWARE LIMITED LIABILITY COMPANY)
PO BOX 705 MIDTOWN STATION
NEW YORK, NY 10018

FOR: HEALTHY SNACKS, NAMELY, NUT AND SEED BASED SNACK BARS; PROCESSED FRUIT-AND NUT-BASED FOOD BARS, NUT BASED SNACK FOOD BARS, FRUIT BASED SNACK FOOD BARS ALSO CONTAINING NUTS, GRAINS, CEREALS AND DRIED FRUIT, IN CLASS 29 (U.S. CL. 46).

FIRST USE 2-1-2010; IN COMMERCE 4-22-2011.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,984,772 AND 3,504,106.

SN 77-816,084, FILED 8-31-2009.

KATHERINE CONNOLLY, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

KINDELICIOUS

Reg. No. 4,049,775

Registered Nov. 1, 2011

Int. Cl.: 29

TRADEMARK

PRINCIPAL REGISTER

KIND, LLC (DELAWARE LIMITED LIABILITY COMPANY)
PO BOX 705 MIDTOWN STATION
NEW YORK, NY 10018

FOR: HEALTHY SNACKS, NAMELY, NUT AND SEED BASED SNACK BARS; PROCESSED FRUIT-AND NUT-BASED FOOD BARS, NUT BASED SNACK FOOD BARS, FRUIT BASED SNACK FOOD BARS ALSO CONTAINING NUTS, GRAINS, CEREALS AND DRIED FRUIT, IN CLASS 29 (U.S. CL. 46).

FIRST USE 2-1-2010; IN COMMERCE 4-27-2011.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,984,772 AND 3,504,106.

SN 77-816,085, FILED 8-31-2009.

KATHERINE CONNOLLY, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office